



Resolving Relief Issues:

Adjustment of Status

2018 Executive Office for Immigration Review

Legal Training Program

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Introduction

Brief Overview

- “Adjustment of Status” = applying for permanent residence inside of U.S.
- “Consular Processing” = applying for permanent residence outside of U.S.

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Introduction

Brief Overview

- More commonly sought affirmatively with USCIS.
- Whether inside or outside U.S., adjustment process begins with filing of visa petition with USCIS.

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Common Abbreviations

- AoS/AOS
- CSPA
- EWI
- IIRAIRA
- Jx
- LPR
- QR
- SIJS
- UC
- USC
- USCIS
- VAWA

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Common Forms

- Form I-130
- Form I-140
- Form I-485
- Form I-601
- Form I-797
- Form I-864

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Jurisdiction

INA § 1245.2(a)(1)

- Generally, IJs will have jurisdiction if an applicant is in removal proceedings.
- But, if applicant is charged as an “arriving alien,” jurisdiction lies with USCIS.

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Jurisdiction

Exception – 8 C.F.R. §1245.2(a)(1)(ii)(A)–(D)

1. AoS application was properly filed with USCIS while in U.S.;
2. Applicant departed U.S. pursuant to grant of advance parole to pursue previously filed application;
3. Application was denied by USCIS; and
4. DHS placed the arriving alien in removal proceedings upon applicant's return or after denial of application.

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Eligibility

INA § 245(a)

- “The status of an alien who ~~was~~ inspected and admitted or paroled into the United States or the status of any other alien having an approved petition for classification as a VAWA self-petitioner may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the
- (2) alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an
 - (3) immigrant visa is immediately available to him at the time his application is filed.”

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Inspection and Admission or Parole: Admission

What is an admission?

- “[L]awful entry of the alien into the United States after inspection and authorization by an immigration officer.”
INA § 101(a)(13)(A).

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Inspection and Admission or Parole: Admission

EWI

- Individuals who enter without inspection are deemed inadmissible under INA § 212(a)(6)(A)(I).

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Inspection and Admission or Parole: Admission

False Documents

- A person may be deemed “inspected and admitted even if inadmissible at time and/or presenting false documents at border. *Matter of Pena*, 26 I&N Dec. 613 (2015).

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Inspection and Admission or Parole: Admission

Waved-In

- Deemed admission even if no questioning by immigration officer as long as there was “procedural regularity.” *Matter of Quilantan*, 25 I&N Dec. 285, 289 (BIA 2010).

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Inspection and Admission or Parole

What is “paroled?”

- Not an admission. INA § 101(a)(13)(B).
- Parole is granted to a noncitizen outside the country to allow him or her to apply for admission but are either inadmissible or do not have a legal basis for admission. INA § 212(d)(5)(A).

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Inspection and Admission or Parole

Advance Parole

- May affect eligibility for adjustment for certain noncitizens.
 - TPS & DACA

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Inspection and Admission or Parole

Parole-In-Place

- Parole from within the U.S. without ever having to leave and risk triggering the 3/10 bars.
 - INA § 212(d)(5)(A)
 - Noncitizen spouses, children, and parents of persons in the armed forces.

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Inspection and Admission or Parole

Proving Admission or Parole

- Documentary Evidence
 - Form I-94, passport with admission stamp, other entry document, etc.
- Applicant's Testimony

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Eligible for Visa & Admissible

Common Grounds of Inadmissibility

Inadmissibility Ground	Statute
Health Related Grounds	INA § 212(a)(1)(A)
Criminal & Related Grounds	INA § 212(a)(2)
Public Charge	INA § 212(a)(4)
Labor Certification	INA § 212(a)(5)
Illegal Entrants & Immigration Violators	INA § 212(a)(6)
Documents Requirements	INA § 212(a)(7)(A)
Previous Removal or Unlawful Presence	INA § 212(a)(9)

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Visa Immediately Available

Immediate Relatives

- Spouses, parents, and children of USCs
- Visas are immediately available.

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Visa Immediately Available

Child

- Under 21 y/o and unmarried.
- Lengthy definition, but here are main categories:

Child born in wedlock – INA § 101(b)(1)(A)	Legitimated Child – INA § 101(b)(1)(C)
Child born out of wedlock – INA § 101(b)(1)(D)	Adopted Child – INA § 101(b)(1)(E)
Step Child – INA § 101(b)(1)(B)	Orphans – INA § 101(b)(1)(F)

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Visa Immediately Available

Child

- Although an individual may be an adult under state law at 18 y/o, he/she may still meet immigration definition of child up until 21 y/o, as long as he/she does not marry.

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Visa Immediately Available

CSPA (Child Status Protection Act)

- Protects child from “aging out” of eligibility during the immigration process.
- Look to age at filing of petition.

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Visa Immediately Available

Preference Immigrants

- Must wait until visa is available before filing AoS application.
- Compare priority date on approval notice with appropriate preference in monthly Visa Bulletin.

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Visa Immediately Available

Family-Based Preferences

- F1 – Unmarried Sons & Daughters of USC's
- F2A – Spouses & Children of LPRs
- F2B – Unmarried Sons & Daughters of USC's
- F3 – Married Sons & Daughters of USC's
- F4 – Brothers & Sisters of Adult USC's

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Visa Immediately Available

Employment-Based Preferences

- First – Priority Workers
- Second – Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability
- Third – Skilled Workers, Professionals, & Other Workers
- Fourth – Certain Special Immigrants
- Fifth – Employment Creation

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Visa Immediately Available

Visa Bulletin

A. FINAL ACTION DATES FOR FAMILY-SPONSORED PREFERENCE CASES

On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are authorized for issuance to all qualified applicants; and "U" means unauthorized, i.e., numbers are not authorized for issuance. (NOTE: Numbers are authorized for issuance only for applicants whose priority date is **earlier** than the final action date listed below.)

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	01JUN11	01JUN11	01JUN11	01AUG97	22DEC06
F2A	22AUG16	22AUG16	22AUG16	01AUG16	22AUG16
F2B	22NOV11	22NOV11	22NOV11	15MAY97	15MAY07
F3	15JUN06	15JUN06	15JUN06	22DEC95	08JUN95
F4	15FEB05	15FEB05	01MAY04	22JAN98	08JUN95

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Visa Immediately Available

Visa Complication

- Visa must be available at the time of filing the application, as well as at the time the application is adjudicated.
- Possible for visa to become unavailable after the filing of the application, prior to adjudication.
- Must be held in abeyance until visa is current again.

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Grounds of Disqualification for Adjustment of Status

INA § 245(c)

- A noncitizen is ineligible to adjust if he/she:
 - I) Is an alien crewman (unless VAWA self-petitioner);

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Grounds of Disqualification for Adjustment of Status

INA § 245(c)

- A noncitizen is ineligible to adjust if he/she:
 - 2) Except for immediate relatives and certain special immigrants:
 - i. Participated in unauthorized employment;
 - ii. Is in unlawful status on date of filing application; or
 - iii. Has failed to maintain continuously lawful status since entry into U.S.;

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Grounds of Disqualification for Adjustment of Status

INA § 245(c)

- A noncitizen is ineligible to adjust if he/she:
 - 3) Was admitted in transit without appropriate visa;
 - 4) Except for immediate relatives, was admitted as nonimmigrant visitor without appropriate visa;

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Grounds of Disqualification for Adjustment of Status

INA § 245(c)

- A noncitizen is ineligible to adjust if he/she:
 - 5) Was admitted as nonimmigrant described in INA § 101(a)(15)(S) (criminal informants);

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Grounds of Disqualification for Adjustment of Status

INA § 245(c)

- A noncitizen is ineligible to adjust if he/she:
 - 6) Is deportable under INA § 237(a)(4)(B) (terrorist activities);

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Grounds of Disqualification for Adjustment of Status

INA § 245(c)

- A noncitizen is ineligible to adjust if he/she:
 - 7) Seeks AoS to that of an employment-based immigrant and is not in lawful immigrant status;

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Grounds of Disqualification for Adjustment of Status

INA § 245(c)

- A noncitizen is ineligible to adjust if he/she:
 - 8) Was employed while an unauthorized alien (INA § 274A(h)(3)), or has otherwise violated the terms of nonimmigrant visa.

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Grounds of Disqualification for Adjustment of Status

INA § 245(c)

- These grounds limit family-based adjustment to mostly immediate relatives (only subject to first ground, crewmen).
- Difficult for applicant to go months or years without work waiting for visa.

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Grounds of Disqualification for Adjustment of Status

INA § 245(c) – Practice Tip

- Look to 245(c) first to quickly determine if an applicant is ineligible for AoS, without having to unnecessarily delve into more complex issues.

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Special Immigrant Juvenile Status (SIJS)

Definition: INA § 101(a)(27)(J)(i)-(ii)

- Simplified: Covers a child:
 - Who is under 21 y/o when filing petition;
 - Who has been declared dependent;
 - Whose reunification with one or both parents is not viable due to abuse, abandonment, and neglect; and
 - In whose best interest it is not to be returned to parents' country.

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Special Immigrant Juvenile Status (SIJS)

Not subject to these inadmissibility grounds:

- INA § 212(a)(4) (public charge), (5)(A) (labor certification/qualifications for certain immigrants), (6)(A) (present w/o admission or parole), (6)(C) (fraud/misrepresentation), (6)(D) (stowaways), (7)(A) (no valid entry document), (9)(B) (unlawfully present)

Not subject to these disqualification grounds under INA § 245(c):

- Participated in unauthorized employment;
- In unlawful status on date of filing application; or
- Failed to maintain continuously lawful status since entry into U.S.

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Forgiveness Provisions

INA § 245(i) – “Grandfathered In”

- Must be a beneficiary of a labor certificate or visa petition under INA § 204 that was filed on or before January 14, 1998; or
- Must be a beneficiary of a labor certification or visa petition that was filed after January 14, 1998, but on or before April 30, 2001, and he or she was physically present in the U.S. on December 21, 2000.
 - Applicant is also subject to a \$1,000 penalty, not waivable by an IJ.

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Forgiveness Provisions

2 Types of Grandfathered Aliens

1. Principal Grandfathered Aliens
2. Derivative Grandfathered Aliens – dependent spouse or child of principal
 - Qualifying relationship must have been established before 4/30/2001 sunset date; subsequent change (death/divorce) does not bar eligibility.

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Forgiveness Provisions

INA § 245(k) – Employment-Based Only

- Forgives disqualifying grounds under INA § 245(c)(2), (7), (8).
- Applies to those who, on date of filing application:
 - Have made a lawful entry, and
 - Thereafter, have not, for more than 180 days, failed to maintain status, engaged in work, or otherwise violated terms/conditions of admissions.

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AoS Derivatives

Spouses and children of principal applicant.

- All preference categories include derivatives; immediate relatives do not.
 - Exception: children of VAWA self-petitioners

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Discretion

- AoS is a discretionary remedy. See *generally Matter of Arai*, 13 I&N Dec. 494 (BIA 1970).
- However, case law makes clear that AoS should ordinarily be granted in the exercise of discretion. See *generally id.* at 494; *Matter of Blas*, 15 I&N Dec. 626 (BIA 1974); *Matter of A-M-*, 25 I&N Dec. 66 (BIA 2009).

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Typical Contents of Adjustment Application

- Visa Petition Approval Notice (Form I-797)
- AoS Application (Form I-485)
- Identity Documents
- Affidavit of Support
- Copy of Passport/I-94 or Form I-485A
- Medical Evaluation
- Waiver Application (Form I-601)
- Receipts for Payment of Filing Fees

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